LEGAL 397v: Civil Liberties in Wartime  
www.courses.umass.edu/leg397v

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COURSE DESCRIPTION AND GOALS

When the executive branch of government faces the daunting task of going to war to defend the nation, it will take whatever steps it deems necessary to win. Curtailing civil liberties is often one of the first steps. During the Civil War, President Abraham Lincoln suspended the writ of habeas corpus and tried suspected sabateurs in military courts. During World War I, President Woodrow Wilson locked up protestors who handed out anti-war leaflets and summarily deported hundreds of immigrants without due process. During World War II, President Franklin Roosevelt locked up 120,000 Japanese Americans and tried enemy spies in military courts. All these actions were challenged in court on the grounds that they violated the constitution, but each one was upheld by the Supreme Court which has been unwilling to question assertions of military necessity during wartime. With hindsight, we can see that some of these measures went too far and resulted in unconstitutional deprivation of liberty. In 1988, for instance, Congress declared that the Japanese internment had been wrong.

Immediately following the attacks on September 11, 2001, President Bush declared war on terrorism. In an effort to win that war, his administration persuaded Congress to pass the far-reaching USA Patriot Act, detained and deported an unknown number of Muslim immigrants living in the U.S., and is detaining hundreds (thousands?) of suspected enemy combatants in military bases for an unspecified period of time.

Our task in this course is to examine the current war on terrorism and its impact on civil liberties with the benefit of the historical record. Will future generations come to see the current measures as going too far or as a minimal deprivation of liberty necessary to defend the nation? Are courts equipped to rule on the executive branch’s justification of military necessity? Is there a long term impact on a democracy when civil liberties are curtailed?

The specific goals of this course are for students to:

- Understand the place and importance of civil liberties in a democratic society.
- Learn what happened in past wars in order to appreciate the context of present events.
- Analyze actions taken by the current administration’s war on terrorism that affect civil liberties.
- Evaluate the impact of these actions on law and society.

We will spend approximately half the semester learning about the historical precedents and half the semester analyzing the current situation. This is very much of an interdisciplinary course. I expect that you will draw on material and concepts that you have studied in other courses in Legal Studies, History, Political Science, Sociology, International Relations, etc.

REQUIRED BOOKS

Available at Jeffrey Amherst College Store, 26 South Pleasant Street, Amherst

Available at copycat Print Shop, 37 East Pleasant Street, Amherst
A one-volume course packet (#036)

For the honors section ONLY:
Peter Irons, Justice at War (1983)
David Cole and James Dempsey, Terrorism and the Constitution (revised edition, 2006)

EVALUATION

40%  Four in-class tests on February 23, March 14, April 13, May 4
42%  Six short essays due February 2, February 23, March 14, April 13, May 4, May 19 (counts double)
06%  Class participation
06%  Congression briefing in-class exercise
06%  Internet research

In-class tests. These will test your factual knowledge of the material we cover in class. They will consist of short answer questions and will take up 30-45 minutes of classtime.

Short essays. These assignments give you an opportunity to reflect on the policy questions raised by the material. They should be 2-3 pages long, except for the final one which should be 4-5 pages long and counts double.

Class participation. Because each of you has a unique background and perspective to contribute to our understanding of this material, I rely on your active participation in class. This requires that you complete all assigned reading for class and come to class prepared to discuss the material. It also requires that you attend all classes.
Congressional briefing exercise. For this in-class exercise, you will assume the role of either a member of the U.S. Senate Judiciary Committee or a witness appearing on behalf of the government or a public interest group. We will spend two classes holding hearings on issues relating to civil liberties and the war on terrorism. Everyone will participate, one way or another! I will give you more details and specific assignments the week after Spring Break.

Internet research. There is a great deal of information on the internet about the issues we will be studying. For this assignment, you will investigate what is out there in cyberspace on these topics—the good, the bad, and the ugly—and write a 2 page report of what you found.

PLAGIARISM. Using information or taking language from any source without attribution is plagiarism. Having someone else write a paper or portion of a paper for you is cheating. These and all other forms of academic dishonesty will not be tolerated in this or any other course and will be dealt with harshly. Do not do anything that has even the appearance of cheating. If you have any questions whatsoever about plagiarism or academic dishonesty, please come talk to me.

ASSIGNMENTS

What are civil liberties?

Tuesday, Jan 31 Introduction

Thursday, Feb. 2 Bill of Rights
Reading due: Course packet, p. 1-3 (Bill of Rights; U.S. Constitution)
First short essay due

Civil War

Tuesday, Feb. 7 Suspension of habeas corpus
Reading due: Ex parte Merryman and Ex parte Vallandigham, course packet, p. 4 – 11

Thursday, Feb. 19 Military commissions
Reading due: Ex parte Milligan, course packet, p. 12-18

World War I

Tuesday, Feb. 14 Overview; Espionage Act and prosecutions
**Thursday, Feb. 16**  
**Deportations**  
Reading due: Course packet, p. 49-76 (The Case Against the Reds, Palmer Raids in New England)

**Tuesday, Feb. 21**  
**NO CLASS; MONDAY SCHEDULE**

**Thursday, Feb. 23**  
**First In-class test**  
**Second short essay due**

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### World War II

**Tuesday, Feb. 28**  
**Pearl Harbor and development of policy towards Japanese**  
Reading due: Course packet, p. 77-91 (Excerpt from *Justice at War* by Peter Irons, Executive Order 9066, Public Law 503, General DeWitt’s Letter of Transmittal)

**Thursday, March 2**  
**Curfew and displacement for Japanese**  
Reading due: Course packet, p. 91-103 (*Hirabayashi v. United States*, *Korematsu v. United States*)

**Tuesday, March 7**  
**Internment and subsequent apologies**  
Reading due: Course packet, p. 103-114 (*Ex parte Endo*, Civil Liberties Act of 1988, Presidential letters of apology)

**Thursday, March 9**  
**Military Commissions**  
Reading due: Course packet, p. 115-121 (*Ex parte Quirin*)

**Tuesday, March 14**  
**Second in-class test**  
**Third short essay due**

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### Cold War

**Thursday, March 16**  
**Free Speech and Internal Security**  
Reading due: Handout (also on website), Federal Loyalty Security Program (*Baily v. Richardson*) and Smith Act (*Dennis v. United States*)

**Tuesday, March 21**  
**S P R I N G**

**Thursday, March 23**  
**B R E A K**

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### War on Terrorism

**Tuesday, March 28**  
**Executive Power and terrorism**  
Reading due: Course packet, p. 122-137 ("Forfeiting Enduring Freedom for Homeland Security")
Thursday, March 30  USA PATRIOT Act  
Reading due: Course packet, pp. 137-147 (finish “Forfeiting Enduring Freedom” article)

Tuesday, April 4  Second wave of federal anti-terrorism legislation  

Thursday, April 6  State legislation, non-profit sector  
Reading due: Sidel, More Secure Less Free?, p. 61-114

Tuesday, April 11  Transparency, secret wiretaps  
Reading due: Sidel, More Secure Less Free?, p. 115-144; Course packet, p. 156 (Joint Resolution of Congress)

Thursday, April 13  Third in-class test  
Fourth short essay due

Tuesday, April 18  FIRST CONGRESSIONAL HEARING EXERCISE

Thursday, April 20  Military detainees, International law  
Reading due: Course packet, p. 148-155 (Geneva Conventions); Handout (also on website), Hamdi v. Rumsfeld

Tuesday, April 25  Military Commissions  
Reading due: Course packet, pp. 147-167; articles on course website

Thursday, April 27  Immigration detainees  
Reading due: Course packet, pp. 186-end (Presumption of Guilt)

Tuesday, May 2  Immigration detainees  
Reading due: Course packet, pp. 173-185 (Inspector General Report)

Thursday, May 4  Fourth in-class test  
Fifth short essay due

Tuesday, May 9  SECOND CONGRESSIONAL HEARING EXERCISE

Thursday, May 11  Cyberspace: War on Terrorism PROs & CONs  
Internet Assignment due

Tuesday, May 16  Scope of executive power

Friday, May 19  Final essay due in Legal Studies office by 3 PM